



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
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San José, California 95113
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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28662**", the original copy of which is attached hereto, was passed for publication of title on the **10th day of November, 2009**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **17th day of November, 2009**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.


DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **December 18, 2009**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **19th day of November, 2009**.

(SEAL)


LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28662

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 28154, WHICH ORDINANCE APPROVED A DEVELOPMENT AGREEMENT WITH NOVELLUS SYSTEMS, INC. RELATIVE TO THE DEVELOPMENT OF REAL PROPERTY IN NORTH SAN JOSE, TO ALLOW EXTENSION OF CERTAIN DEADLINES CONTAINED IN THE ORIGINAL DEVELOPMENT AGREEMENT AND TO AUTHORIZE THE CITY CLERK TO EXECUTE A FIRST AMENDMENT TO THE ORIGINAL DEVELOPMENT AGREEMENT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of City of San Jose ("City") Ordinance No. 24297 (the "Enabling Ordinance"), both of which provide for the ability to adopt and amend development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 2. This Ordinance incorporates by reference that certain "First Amendment to Development Agreement By and Between the City of San José and Novellus Systems, Inc.," relative to the development of real property located in North San José, which amendment is attached hereto as Exhibit A (the "First Amendment"), together with the Original Development Agreement, as defined in Section 3, below (collectively, the First Amendment and the Original Development Agreement " are sometimes referred to herein as the "Amended Development Agreement").

SECTION 3. The City Council finds that the following are the relevant facts concerning the proposed First Amendment:

- A. A "Development Agreement By and Between the City of San José and Novellus Systems, Inc., Relative to the Development of Certain Real Properties Located in the City of San José " was approved by City under City Ordinance No. 28154 and entered into by City and Novellus Systems, Inc., a California corporation ("DEVELOPER") as of December 20, 2007 (the "Original Development Agreement").

- B. DEVELOPER, together with Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, both of whom are successors in interest to DEVELOPER, requests the First Amendment to extend certain deadlines set forth in the Original Development Agreement. All parties to the Amended Development Agreement believe it is desirable and in the best interests of all said parties to provide the best possible opportunities for the projects envisioned by the Amended Development Agreement to be successfully undertaken, in light of existing economic and market conditions, all as set forth in the Amended Development Agreement.
- C. With the exception of the extension of certain deadlines expressly amended in the First Amendment, the terms and conditions of the Original Development Agreement would remain in full force and effect, such that no changes in the general plan designations, zoning designations, or analyses completed pursuant to the California Environmental Quality Act of 1970 ("CEQA") and pertaining to the Original Development Agreement would be affected by the terms of the First Amendment.

SECTION 4. This Council, based upon analysis of the facts set forth above, finds and concludes that the extension of the time periods set forth in the First Amendment will not adversely impact City, DEVELOPER, nor the development of the real properties located in North San Jose that are the subject of, and as set forth in, the Amended Development Agreement.

SECTION 5. The City Council hereby adopts the following as its findings required by Section 12 of the Enabling Ordinance:

- A. Development of the real properties that are the subject of the this Amended Development Agreement, in accordance with the conditions of the Amended Development Agreement, will continue to promote and provide for orderly growth and development of said real properties in accordance with the policies set forth in the City's General Plan, as described in the Amended Development Agreement.

- B. The Amended Development Agreement remains consistent with the General Plan, Zoning Code and CEQA clearances issued for the projects described in the Original Development Agreement in that none of those elements have changed nor are proposed to change under the First Amendment.

SECTION 6. The City Council hereby approves the First Amendment in substantially the form attached hereto as Exhibit A and hereby authorizes and directs the City Clerk to execute the First Amendment in substantially the form approved by this Ordinance on behalf of the City of San Jose within a reasonable period of time after this Ordinance becomes effective.

PASSED FOR PUBLICATION of title this 10th day of November, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, HERRERA, KALRA, LICCARDO,
OLIVERIO, PYLE, REED.

NOES: NONE.

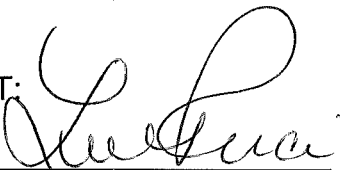
ABSENT: CHU, CONSTANT, NGUYEN.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SAN JOSE
AND
NOVELLUS SYSTEMS, INC.**

This First Amendment to Development Agreement ("First Amendment") is made as of November __, 2009 by and between the City of San Jose, a Municipal Corporation ("CITY") on the one hand, and Novellus Systems, Inc., a California corporation ("NOVELLUS"), together with Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, on the other hand (together Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, may sometimes be referred to herein collectively as "VISTA MONTANA"), with reference to the following facts:

A. CITY and NOVELLUS entered into a development agreement (the "Development Agreement") as of the 20th day of December, 2007 concerning the development of properties in the North San Jose area, including properties referred to therein as the RESIDENTIAL PROPERTY, the CAMPUS INDUSTRIAL PROPERTY, the COMMUNITY PARK PROPERTY, and the NEIGHBORHOOD PARK PROPERTY. Each capitalized term used in this First Amendment, but not defined herein, shall have the meaning ascribed to it in the Development Agreement.

B. NOVELLUS has provided CITY with documents evidencing that NOVELLUS made a partial assignment of its rights and obligations under the Development Agreement to VISTA MONTANA. The assignment is evidenced by that certain Assignment and Assumption Agreement (the "Assignment") between NOVELLUS and VISTA MONTANA executed as of the 21st day of December, 2007 and to which CITY is not a party. The Assignment contains a schedule of allocated rights and obligations under the Development Agreement, pursuant to which the parties thereto have allocated and assigned all rights and obligations in the portions of the Development Agreement that are modified in this First Amendment to VISTA MONTANA. The Assignment does not affect the rights or obligations of CITY or NOVELLUS as against each other under the Development Agreement, including, without limitation, NOVELLUS' obligations in connection with the COMMUNITY PARK PROPERTY and the NEIGHBORHOOD PARK PROPERTY and the provisions of Section 1.C.(2) of the Development Agreement.

C. CITY, NOVELLUS, and VISTA MONTANA now desire to amend the Development Agreement in certain respects, which amendment is desirable and in the best interests of all of the parties to provide the best possible opportunities for the projects that were assigned to VISTA MONTANA and that are envisioned by the Development Agreement to be successfully undertaken, in light of existing economic and market conditions.

NOW THEREFORE, in consideration of the mutual conditions and covenants contained in the Development Agreement and herein, CITY and VISTA MONTANA hereby amend the Development Agreement as follows:

1. Section 1.B of the Development Agreement, which reads as follows:

B. Term. The term of this AGREEMENT shall commence no earlier than the effective date of Ordinance No. 28154 approving this AGREEMENT (herein the "ADOPTING ORDINANCE") and shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto; provided, however, that notwithstanding the foregoing to the contrary and specifically and only with regard to the provisions of SECTION 2.E hereinbelow relating to NOVELLUS' reservation of residential unit capacity under CITY's North San Jose Area Development Policy (the "NSJ ADP"), such reservation of capacity shall be effective for a period of five (5) years from the effective date of the ADOPTING ORDINANCE. Following the expiration of said twenty (20) year term of this AGREEMENT, this AGREEMENT shall be deemed terminated and of no further force and effect.

is hereby amended to read as follows:

B. Term. The term of this AGREEMENT shall commence no earlier than the effective date of Ordinance No. 28154 approving this AGREEMENT (herein the "ADOPTING ORDINANCE") and shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto; provided, however, that notwithstanding the foregoing to the contrary and specifically and only with regard to the provisions of SECTION 2.E hereinbelow relating to NOVELLUS' reservation of residential unit capacity under CITY's North San Jose Area Development Policy (the "NSJ ADP"), such reservation of capacity shall be effective until and including December 20, 2014. Following the expiration of said twenty (20) year term of this AGREEMENT, this AGREEMENT shall be deemed terminated and of no further force and effect.

2. The following sentence from Section 2.A, page 12, of the Development Agreement:

In addition and notwithstanding anything foregoing to the contrary, the reservation of capacity under the NSJADP as described in SUBSECTION 2.C hereinbelow shall be vested for NOVELLUS under this AGREEMENT for the term of this AGREEMENT, and the reservation of residential unit

capacity under the NSJADP as described in SUBSECTION 2.E 28662
hereinbelow shall be vested for NOVELLUS for a period of five (5) years
from the EFFECTIVE DATE hereof, which reservation of residential unit
capacity may be transferred by NOVELLUS as described in
SUBSECTION 2.E hereinbelow.

is hereby amended to read as follows:

In addition and notwithstanding anything foregoing to the contrary, the reservation of capacity under the NSJADP as described in SUBSECTION 2.C hereinbelow shall be vested for NOVELLUS under this AGREEMENT for the term of this AGREEMENT, and the reservation of residential unit capacity under the NSJADP as described in SUBSECTION 2.E hereinbelow shall be vested for NOVELLUS until and including December 20, 2014, which reservation of residential unit capacity may be transferred by NOVELLUS as described in SUBSECTION 2.E hereinbelow.

3. The following sentence from Section 2.E, page 14, of the Development Agreement:

CITY shall reserve for allocation to the RESIDENTIAL PROPERTY Nine Hundred Ninety-Eight (998) units of residential capacity out of the residential development capacity provided in Phase 1 of the NSJ ADP for a period of 5 years from the date of this AGREEMENT.

is hereby amended to read as follows:

CITY shall reserve for allocation to the RESIDENTIAL PROPERTY Nine Hundred Ninety-Eight (998) units of residential capacity out of the residential development capacity provided in Phase 1 of the NSJ ADP until and including December 20, 2014.

4. The following sentence in Section E of Exhibit E of the Development Agreement:

No later than the date of the one (1) year anniversary of the EFFECTIVE DATE of this AGREEMENT ("Payment Commencement Date"), NOVELLUS shall begin making annual payments to CITY, in the form of cashier's checks or other immediately available funds, in the amount of Seventy-Five Thousand Dollars (\$75,000), which CITY shall deposit into a Gift Trust Fund.

is hereby amended to read as follows:

No later than December 20, 2010 or the date that CITY issues a notice to proceed for the construction of the COMMUNITY PARK PROPERTY, whichever date first occurs ("Payment Commencement Date"),

NOVELLUS shall begin making annual payments to CITY, in the form of cashier's checks or other immediately available funds, in the amount of Seventy-Five Thousand Dollars (\$75,000), which CITY shall deposit into a Gift Trust Fund.

5. The following sentence in Section F of Exhibit E of the Development Agreement:

CITY and NOVELLUS anticipate that NOVELLUS will obtain the first building permit for the MULTI-FAMILY UNITS on or before the two (2) year anniversary of the EFFECTIVE DATE of this AGREEMENT ("BUILDING PERMIT DATE").

is hereby amended to read as follows:

CITY and NOVELLUS anticipate that NOVELLUS will obtain the first building permit for the MULTI-FAMILY UNITS on or before December 20, 2011 ("BUILDING PERMIT DATE").

6. Except as expressly modified by this First Amendment, all of the terms, provisions and conditions contained within the Development Agreement shall remain in full force and effect. In the event of any direct conflict between this First Amendment and the Development Agreement, this First Amendment shall govern and control the agreement of the parties.

7. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first set forth above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

Lee Price, MMC
City Clerk

By: _____
Sr. Deputy City Attorney

NOVELLUS

NOVELLUS SYSTEMS, INC., a California corporation

By: _____

Its _____

VISTA MONTANA

VISTA MONTANA PARK HOMES LLC, a
Delaware limited liability company

By: ERP Operating Limited Partnership,
an Illinois limited partnership, its managing
member

By: Equity Residential, a Maryland real
estate investment trust, its general
partner

By: _____

Name: _____

Title: _____

EQUITY-TASMAN APARTMENTS LLC, a
Delaware limited liability company

By: ERP Operating Limited Partnership,
an Illinois limited partnership, its managing
member

By: Equity Residential, a Maryland real
estate investment trust, its general
partner

By: _____

Name: _____

Title: _____